

YUO-FONG C. AMATO (Bar No. 261453)  
bamato@gordonrees.com  
GORDON REES LLP  
101 West Broadway, Suite 2000  
San Diego, CA 92131 USA  
TEL: 619.230.7714  
FAX: 619.696.7124

Attorney for Plaintiff  
CROSSFIT, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CROSSFIT, INC., a Delaware  
corporation,

Plaintiff,

v.

360 FITNESS SUPERSTORE, a  
business entity of unknown origin;  
ALEX KRICHEVSKY, individually,

Defendants.

CASE NO.

**COMPLAINT FOR:**

- 1. Trademark Infringement**  
[15 U.S.C § 1114];
- 2. False Designation of Origin**  
[15 U.S.C § 1125(a)];
- 3. Trademark Dilution**  
[15 U.S.C § 1125(c)];

**JURY TRIAL DEMAND**  
[FRCP 38]

Plaintiff CrossFit, Inc. (“Plaintiff” or “CrossFit”) for its Complaint against  
Defendants 360 Fitness Superstore and Alex Krichovsky (collectively,  
“Defendants”) respectfully alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for willful violations of CrossFit’s intellectual  
property rights, including trademark infringement arising out of Defendants’  
unauthorized use of CrossFit’s registered service marks and trademarks and/or  
terms confusingly similar to CrossFit’s registered service marks and trademarks.

## **JURISDICTION AND VENUE**

2. This action arises under the trademark laws of the United States, 15 U.S.C. § 1051 *et seq.*

3. This Court has subject matter jurisdiction over CrossFit's claims as federal questions pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 1338(a) and (b).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

## **THE PARTIES**

5. Plaintiff CrossFit, Inc. ("Plaintiff" or "CrossFit"), is a Delaware Corporation principally engaged in the business of fitness training and consultancy. CrossFit is the owner of protectable interests in several registered United States trademarks and service marks comprised of the term "CrossFit."

6. On information and belief, Defendant 360 Fitness Superstore is a business entity of unknown form or origin with its places of business located at 727 Francisco Blvd East, San Rafael, California, 94901, and 1821 Mt. Diablo Blvd, Walnut Creek, California, 94596. Defendant 360 Fitness Superstore is a retail company that offers fitness and exercise equipment online and in stores.

7. On information and belief, Defendant Krichevsky is a California resident residing in the San Francisco Bay Area.

8. On information and belief, Plaintiff hereby alleges that 360 Fitness Superstore is the alter ego of Krichevsky because there is a unity of ownership and interest between Krichevsky and 360 Fitness Superstore, such that no separation between the two defendants actually exists. On information and belief, Krichevsky is the owner of 360 Fitness Superstore, treats the assets of 360 Fitness Superstore as his own, and authorized and/or ratified all of the acts of 360 Fitness Superstore, alleged herein for his own personal benefit. Because Krichevsky has utilized 360 Fitness Superstore's assets for personal gain and has diverted funds generated by 360 Fitness Superstore to his own for personal use, treating Krichevsky and 360 Fitness Superstore as separate entities would be unjust.

## **GENERAL ALLEGATIONS**

### **Plaintiff's Trademarks**

9. CrossFit, Inc. ("CrossFit") is the owner of the CROSSFIT® family of trademarks as registered with the United States Patent and Trademark Office, Registration Numbers 3,007,458; 3,826,111; 4,049,689, 4053443 and 4,122,681 for use with its many products and services beginning at least as early as 1985. CrossFit also has many pending applications for the CROSSFIT® marks, including Serial Numbers 77/719,836; 77/719,838; 77/719,842; 77/719,862; 85/629,318; 85/595640, 85/595,646 and 85/595,737.

10. Plaintiff, through its founder, Greg Glassman, has conceived and developed a fitness regime designed to optimize fitness through varied functional movements. Plaintiff has invested a tremendous amount of time and capital making CROSSFIT® the premier brand for fitness related services to find the Fittest Man and Woman on Earth™. In 2009, Plaintiff registered the name CROSSFIT® in several categories, and submitted an intent to use application under Section 1(b) of Lanham Act (15 U.S.C. §1051 et. seq.) in international class 28 covering exercise equipment, and such application has been approved by the U.S. Patent and Trademark Office.

11. In an effort to further define the CROSSFIT® brand, Plaintiff has created a website, [www.crossfit.com](http://www.crossfit.com), to provide the Workout of the Day, training videos, and various other athletic advice to its clients.

12. Plaintiff aggressively polices and licenses the CROSSFIT® mark to affiliate trainers (and their gyms) who have undergone a specific training program, and who have been approved as a CROSSFIT® Level 1 Certificate Holder, to assure quality control and uniformity of the fitness programs worldwide.

### **Defendant's Infringement of Plaintiff's Trademark**

13. Defendants are not affiliated with Plaintiff. CrossFit has not licensed or given permission to Defendants to use the CROSSFIT® trademark. Despite the

1 foregoing, as early as 2012, Defendants, without Plaintiff's knowledge or  
2 permission, began using the CROSSFIT® mark multiple times on its website and  
3 Internet media to sell fitness and home gym equipment. Defendants offer for sale  
4 "CrossFit" Olympic lifting bars, medicine balls, bumper plates, kettlebells and more.  
5 A true and correct screenshot of Defendants' website home page is attached hereto  
6 as **Exhibit A**; a red circle and arrow have been added to direct attention to  
7 Defendants' use of the CROSSFIT® mark.

8         14. Defendants advertise their equipment using the CROSSFIT® mark  
9 through the same marketing channels that CrossFit utilizes, including various  
10 Internet media. Defendants' use of the CROSSFIT® mark creates the false  
11 impression that Defendants are licensed to use the CROSSFIT® mark, creating  
12 consumer confusion.

13         15. On information and belief, Defendants use the CROSSFIT® mark with  
14 the intent to mislead consumers into believing that Defendants are licensed to use  
15 the CROSSFIT® mark and with the intent to profit by trading on CrossFit's  
16 goodwill.

17         16. Defendants were and are, at all relevant times, at least constructively  
18 aware of CrossFit's prior use, ownership, and registration of the CROSSFIT®  
19 marks.

20         17. Defendants' use of the CROSSFIT® mark reflects a deliberate attempt  
21 by Defendants to give their goods an instant credibility that is not otherwise  
22 warranted, and to confuse an unsuspecting customer.

23         18. Defendants' use of the CROSSFIT® mark is likely to cause confusion  
24 or mistake, or deceive purchasers, potential purchasers, and the relevant consuming  
25 public and trade as to the source or sponsorship or approval of Defendants' products,  
26 and/or as to its affiliation with CROSSFIT®, and is thereby causing harm to  
27 CrossFit's reputation and goodwill.  
28

1           19. Defendants' unlawful conduct is causing and will continue to cause  
2 harm to CrossFit. In particular, consumers seeing Defendants' goods sold under the  
3 CROSSFIT® mark will believe that the Defendants' goods are associated with  
4 CrossFit and/or the CROSSFIT® mark. This conduct, if not enjoined, will  
5 undermine the goodwill that CrossFit has spent decades carefully cultivating for its  
6 marks.

7           20. On October 18, 2012, CrossFit sent Cease & Desist communications to  
8 Defendant 360 Fitness Superstore, demanding Defendant cease and desist its use of  
9 the CROSSFIT® mark on Defendant's website, blogs, social media, third party  
10 website, advertisements, and in stores. On or about November 26, 2012, CrossFit  
11 sent additional Cease & Desist communications demanding again that Defendant  
12 cease using the CROSSFIT® mark.

13           21. On or about November 30, 2012, Defendant 360 Fitness Superstore  
14 continued to use the CROSSFIT® mark on its website, substituting "CrossFitness"  
15 for "CrossFit." CrossFit again contacted Defendant 360 Fitness Superstore to  
16 demand that Defendant cease using the CROSSFIT® mark, including confusingly  
17 similar variations such as "CrossFitness."

18           22. On December 5, 2012, CrossFit yet again contacted Defendant 360  
19 Fitness Superstore regarding its continued use of the CROSSFIT® mark in  
20 Defendant's URL and meta-tags in its website. Plaintiff is informed and believes  
21 that the text in the URL and the meta-tags were included to lead people to  
22 Defendant's website who conduct Internet searches for "CrossFit" and "CrossFit  
23 equipment."

24           23. Following the December 5, 2012 communications, Defendant 360  
25 Fitness Superstore removed references to the CROSSFIT® mark on its website and  
26 other media, and CrossFit considered the matter closed.  
27  
28

1           24. On or about February 1, 2014, CrossFit discovered that Defendants  
2 had begun using the CROSSFIT® marks yet again on its website as well as its social  
3 media profiles. On Defendants' www.360fitnesssuperstore.com website in  
4 particular, Defendants began using the CROSSFIT® mark as part of images instead  
5 of html text. On information and belief, Defendants did so willfully, with the intent  
6 that using the CROSSFIT® mark in images instead of html text, Defendants'  
7 resumed infringement may elude detection by CrossFit, since the content of images  
8 is usually not searched as part of automated searches.

9           25. Among other things, as part of this resumed infringement, Defendants  
10 claimed that they sold "CrossFit"-branded exercise equipment. Attached as **Exhibit**  
11 **B** is a true and correct copy of Defendants' current Facebook profile, and attached as  
12 **Exhibit C** is a true and correct copy of relevant metatags from Defendants' home  
13 page, www.360fitnesssuperstore.com; the CROSSFIT® mark has been highlighted  
14 in both exhibits.

15           26. On February 4, 2014, CrossFit sent a cease and desist communication  
16 to Defendants regarding the newly discovered use of the CrossFit mark by  
17 Defendants. Defendants made some changes to its website but did not remove all  
18 references to the CROSSFIT® mark, and did not respond to CrossFit.

19           27. On February 12, 2014, CrossFit sent another cease and desist  
20 communication to Defendants regarding Defendants' continued infringement of the  
21 CROSSFIT® mark. Defendants failed to respond.

22           28. On February 17, 2014, CrossFit sent yet another cease and desist  
23 communication to Defendants regarding Defendants' continued infringement of the  
24 CROSSFIT® mark. CrossFit informed Defendants that if Defendants did not cease  
25 infringement that CrossFit would be forced to bring a lawsuit. Defendants failed to  
26 respond.

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**FIRST CLAIM**  
**Trademark Infringement (15 U.S.C. § 1114)**

29. Plaintiff realleges and incorporates herein by this reference each and every allegation contained in this Complaint, and incorporates such paragraphs as though fully set forth at length herein.

30. This claim is for trademark infringement under the laws of the United States, Section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a).

31. Defendants have used the CROSSFIT® mark to advertise and sell Defendants’ fitness equipment in violation of CrossFit’s rights in its registered trademarks and service marks.

32. Defendants’ use of the CROSSFIT® mark is likely to cause confusion, mistake, and to deceive consumers.

33. Defendants’ actions constitute a blatant attempt to confuse the consuming public and to trade off CrossFit’s goodwill.

34. Defendants acted knowingly and willfully, with full knowledge of the likelihood of confusion and with the intent to deceive consumers in order to trade off the efforts and earned goodwill and reputation of CrossFit.

35. Plaintiff has requested Defendants to cease and desist from utilizing any of Plaintiff’s trademarks and has given Defendants actual notice of Plaintiff’s trademark rights. Defendants had at some point ceased its infringement but then knowingly and willfully resumed such infringement, and attempted to hide such infringement by placing the CROSSFIT® mark in non-searchable images.

36. Defendants have refused to cease such infringing acts and have continued to actively and willfully advertise and solicit the sale of its goods improperly using Plaintiff’s trademark.

37. By reason of the foregoing acts of trademark infringement, CrossFit has been injured in an amount not yet ascertained. Further, Defendants have been

1 unjustly enriched by virtue of their deception of consumers and misappropriation of  
2 CrossFit's goodwill.

3 38. In addition, as a result of Defendants' acts of infringement, CrossFit  
4 has suffered and will continue to suffer irreparable harm for which CrossFit has no  
5 adequate remedy at law, including damage to CrossFit's goodwill. Unless  
6 Defendants' acts of infringement are enjoined by this Court, CrossFit will continue  
7 to suffer an irreparable harm.

8 39. Defendants' actions have been knowing, intentional, wanton, and  
9 willful. The principles of equity warrant an award to CrossFit of treble damages and  
10 profits, attorney's fees, and the costs of this action pursuant to 15 U.S.C. § 1117.

11 **SECOND CLAIM**  
12 **False Designation of Origin (15 U.S.C. § 1125(a))**

13 40. Plaintiff realleges and incorporates herein by this reference each and  
14 every allegation contained in this Complaint, and incorporates such paragraphs as  
15 though fully set forth at length herein.

16 41. Defendants' use of CrossFit Marks in interstate commerce, without  
17 CrossFit's consent, is a false designation of origin causing a likelihood of confusion,  
18 mistake, and deception as to source, sponsorship, affiliation, and/or connection in  
19 the minds of the public. Defendants' conduct infringed CrossFit's trademark rights  
20 in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

21 42. By reason of the foregoing, CrossFit has been injured in an amount not  
22 yet fully determined. Further, Defendants have been unjustly enriched by virtue of  
23 their deception of consumers and misappropriation of CrossFit's goodwill.

24 43. In addition, as a result of Defendants' acts of infringement, CrossFit  
25 suffered and will continue to suffer irreparable harm for which CrossFit has no  
26 adequate remedy at law, including damage to CrossFit's goodwill. Unless  
27 Defendants' acts of infringement are enjoined by this Court, CrossFit will continue  
28 to suffer irreparable harm.



1           44. Defendants' actions have been knowing, intentional, wanton, and  
2 willful. The principles of equity warrant an award to CrossFit of treble damages and  
3 profits, attorney's fees, and the costs of this action pursuant to 15 U.S.C. § 1117.

4                                   **THIRD CLAIM**  
5                                   **Trademark Dilution (15 U.S.C. § 1125(c))**

6           45. Plaintiff realleges and incorporates herein by this reference each and  
7 every allegation contained in this Complaint, and incorporates such paragraphs as  
8 though fully set forth at length herein.

9           46. This claim is for trademark dilution under the laws of the United  
10 States, Section 43 of The Lanham Act, 15 U.S.C. § 1125(c).

11           47. Because of the substantive investment CrossFit has made in marketing  
12 its business, throughout years of continuous use in commerce, including advertising  
13 and extensive marketing, CrossFit's service marks and trademarks have become  
14 instantly recognizable and distinctive in the fitness industry, have gained secondary  
15 meaning, and have become both distinctive and famous. Thus, CrossFit Marks  
16 qualify as "famous marks" under the Federal Trademark Dilution Act ("FTDA"), 15  
17 U.S.C. § 1125(c).

18           48. Defendants' use of the CrossFit Marks began after CrossFit's Marks  
19 became famous.

20           49. Defendants' unauthorized use of the CrossFit name is likely to cause  
21 dilution by blurring of the CrossFit Marks.

22           50. Defendants willfully intended to trade on the recognition of the famous  
23 CrossFit Marks.

24           51. By reason of the foregoing acts of trademark dilution, CrossFit has  
25 been injured in an amount not yet ascertained. Further, Defendants have been  
26 unjustly enriched by virtue of their dilution of CrossFit Marks.

27           52. In addition, as a result of Defendants' acts of infringement, CrossFit  
28 suffered and will continue to suffer irreparable harm for which CrossFit has no

1 adequate remedy at law, including damage to CrossFit's goodwill. Unless  
2 Defendants' acts of infringement are enjoined by this Court, CrossFit will continue  
3 to suffer irreparable harm.

4           53. Defendants' actions have been knowing, intentional, wanton, and  
5 willful. The principles of equity warrant an award to CrossFit of treble damages and  
6 profits, attorney's fees, and the costs of this action pursuant to 15 U.S.C. § 1117.

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**PRAYER**

WHEREFORE, Plaintiff prays for the following relief:

A. That judgment be entered in favor of Plaintiff that Defendants have infringed and is infringing Plaintiff's trademark;

B. That a preliminary and permanent injunction be issued pursuant to 15 U.S.C. § 1116 enjoining Defendants, its officers, agents, servants, employees, and all other persons acting in concert or participation with them from using, including but not limited to selling, or otherwise exploiting or attempting to exploit, Plaintiff's trademark for and/or in connection with any business involving the offer or sale of goods or services, or for any other purpose;

C. That Plaintiff be awarded all compensatory damages and Defendants' profits, with prejudgment interest, that it is entitled to under the Lanham Act according to proof at trial;

D. That Plaintiff be awarded all costs incurred herein;

E. That this case be decreed an "exceptional case" under the Lanham Act, and that Plaintiff be awarded trebled damages, attorneys' fees, costs, and any other remedy to which they are entitled; and

F. For such further relief as the Court deems just and proper.

DATED: February 25, 2014

GORDON REES LLP

By: /s/Yuo-Fong C. Amato  
YUO-FONG C. AMATO, ESQ.  
Attorney for Plaintiff  
CROSSFIT, INC.

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DATED: February 25, 2014

GORDON REES LLP

By: /s/Yuo-Fong C. Amato  
YUO-FONG C. AMATO, ESQ.  
Attorney for Plaintiff  
CROSSFIT, INC.

# **Exhibit A**



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Delivery  
**30 - DAY**  
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**TOP BRANDS**

**BEST SELLERS**

**TOP RATED**

**DEAL OF THE WEEK**

**Life Fitness**

Life Fitness Treadmills  
Life Fitness Elliptical  
Life Fitness Bikes  
Life Fitness Home Gyms



**TRUE**

ESX Series Elliptical  
TSX Series Elliptical



**Octane FITNESS**

Octane Ellipticals  
Octane Seated Ellipticals



**BOWFLEX**

Adjustable Dumbbells  
Replaces 15 sets of weights. Weights adjust from 5 to 52.5 lbs.



**CROSSFIT**

Medicine Balls  
Bumper Plates  
Olympic Bars  
Kettlebells  
[more>](#)



**PILATES & YOGA**

Yoga & Pilates Bags  
Yoga Towels & Cleaners  
Yoga Blocks & Straps  
Pilates Rings  
Pilates Reformer



**Life Fitness**

**LANDICE**

**POWERTEC**

**HEISER**

**StairMaster**

**Freemotion**

**KETTLER**

**TUFFSTUFF**

**CV/BEX**

**DIAMONDBACK**

**Octane**

**CycleOps**

**BOWFLEX**

**SCYBEX**

**VECTRA**

**BodyCraft**

**BODYGUARD**

**NAUTILUS**

**TRUE**

**SCHWINN**

**PRODUCTS**

Commercial  
Residential  
Physical Therapy  
Personal Trainer

Home Gyms  
Treadmills  
Ellipticals  
Exercise Bikes

Spinners  
Rowers  
Stability & Balance  
Kettlebells

Abs & Core  
Cross Training / WOD  
Speed & Agility  
Sports Performance

Benches & Stations  
Yoga & Pilates  
Weight & Dumbbells  
Fitness Accessories

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**Life Fitness Lowest Prices!**

**LIMITED TIME OFFER! GREAT TRADE-IN OLD FOR NEW**

**DEAL OF THE WEEK**

**0% NO INTEREST FINANCING AVAILABLE**

North Bay: (888) 431-2702 ext 802

East Bay: (888) 431-2702 ext 803

South Bay: (888) 431-2702 ext 804

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## **Exhibit B**

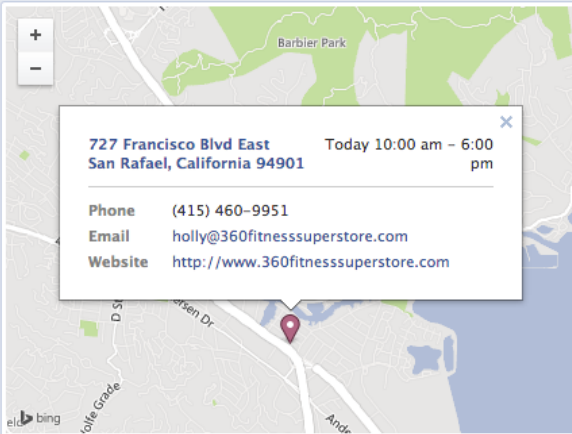


360 Fitness Superstore

About

Like

Create Page



**727 Francisco Blvd East** Today 10:00 am – 6:00 pm  
**San Rafael, California 94901**

Phone (415) 460-9951  
 Email holly@360fitnesssuperstore.com  
 Website http://www.360fitnesssuperstore.com

## Basic Info

**Joined Facebook** 04/19/2011

**Hours** Mon – Sat: 10:00 am – 6:00 pm  
 Sun: 11:00 am – 5:00 pm

**Parking** Street Parking Lot

## Also On

Foursquare  
 Yelp

## About

360 Fitness Superstore, along with our original store Fitness Concept, has been a Bay Area & San Francisco Life Fitness authorized dealer since 1981.

### Description

We carry any and all fitness equipment, from cardio and strength machines to yoga mats and medicine balls.

Our stores feature ellipticals, treadmills, exercise bikes (upright bikes and recumbent bikes, such as the Lifecycle and the Exercycle), steppers, rowing machines, home gyms, weights, bumper plates and all home gym equipment, plus a huge selection of fitness accessories.

We are a major fitness equipment dealer in the Marin & San Francisco Bay area. We are authorized dealers for Life Fitness, Precor, TRUE, Octane, Landice, Lemond, Bodyguard, StairMaster, Vectra, Tuff Stuff, Body-Solid, and Bodycraft, just to name a few.

Our fitness accessories include exercise balls, yoga mats, stretch bands, rubber bands, exercise books, exercise dvds, adjustable dumbbells, adjustable weights, heart monitors, mats & flooring. Our Fitness Concept store features home gym equipment including weights, smith machines, dumbbells, medicine balls, kettle bells, bumper plates, as well as cardio and strength machines such as exercise bikes, treadmills, ellipticals, steppers, and rowing machines.

Our 360 Fitness Superstore location carries fitness equipment for yoga, pilates, balance, strength, stability, plyometrics, stretching, and resistance, as well as all cardio and strength machines, direct from our fitness warehouse.

We can provide the fitness equipment for any physical fitness training program, such as Crossfit, cross training, core training, sports performance, stability training, plyometrics, interval training, agility training, explosive training, interval training, resistance training, power lifting and rehabilitation. We carry fitness equipment suitable for personal trainers and fitness professionals, such as physical therapists and coaches.

Both Fitness Concept and 360 Fitness Superstore are authorized Life Fitness dealers, authorized Precor Dealers, authorized Landice dealers, authorized Octane dealers, authorized Bodyguard dealers, and authorized Landice dealers. We also carry other brands such as Kettler, Keiser, Nautilus, StarTrac, Water Rower, Schwinn, Powertec, and BodyBar.

We can supply all your fitness need at our store and fitness equipment warehouse!

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Get an 8-day free guest pass, access to exciting classes and state-of-the-art equipment.

Jennifer Lehman Duffy and Juan Jose Hernandez like this.

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Earn an LL.M. in U.S. Law online at Washington University Law. Apply Today.



## **Exhibit C**

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<font color="#000066" size="2">
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Adjustable Dumbbells<br></font></span><span style="font-family: Tahoma; font-weight: 700"><font color="#000066" size="2"><a href="bowflex.shtml" style="text-decoration: none"><font color="#333333">Replaces 15 sets of weights. Weights adjust from 5 to 52.5 lbs.</font></a></font></span></td>
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